

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

JIMMY CULBERT

PLAINTIFF

V.

CAUSE NO. 3:14-CV-616-CWR-LRA

CHRISTOPHER B. EPPS

DEFENDANT

ORDER ADOPTING REPORT AND RECOMMENDATION

This matter is before the Court pursuant to the Report and Recommendation of United States Magistrate Judge Linda R. Anderson, Docket No. 25, and petitioner Jimmy Culbert's objections to that Report and Recommendation, Docket No. 32.

Having considered the objections, the Court is unpersuaded that the Report and Recommendation erred. Binding Fifth Circuit law holds that Culbert did not timely institute proceedings to challenge the revocation of his credits. *See Kimbrell v. Cockrell*, 311 F.3d 361, 364 (5th Cir. 2002).

It is worth reciting the relevant part of that precedent:

Under 28 U.S.C. § 2244(d)(1)(D), the one-year period commences when “the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.” Kimbrell knew he was deprived of several thousand days good-time credit, for possessing paraphernalia that could be used to escape, when the hearing was held on December 2, 1998. His federal petition was filed in November, 2000, nearly two years later. While the timely pendency of prison grievance procedures would have tolled the one-year period, Kimbrell did not institute them until more than a year after the disciplinary hearing.

Id. at 363-64.

Here, the five-year delay between Culbert's revocation of credits and his initiation of prison grievance procedures was simply too long. He was required to initiate the prison grievance procedures within one year of the revocation of his credits.

Accordingly, this Court adopts the Report and Recommendation as its own findings and conclusions, and this case is dismissed with prejudice.

SO ORDERED, this the 10th day of April, 2015.

s/ Carlton W. Reeves
UNITED STATES DISTRICT JUDGE